



State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-2900 FAX (603) 271-2456



February 8, 2002

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Rachel Roberts Naughton  
P.O. Box 135  
Warner, NH 03278

Re: Administrative Order No. WMD 02-006

Dear Mrs. Naughton,

Enclosed is Administrative Order No. WMD 02-006 issued this date to you as a result of an inspection conducted on January 9, 2002.

Should you have any questions regarding this order, please contact Michael Galuszka or me at 271-3899.

Sincerely,

Kenneth W. Marschner, Administrator  
Waste Management Programs  
Department of Environmental Services

Certified Mail/RRR: 7099 3400 0002 9769 7785

cc: File/DB  
Gretchen Rule, DES Enforcement Coordinator  
Public Information Officer, DES PIP Office  
Jennifer Patterson, Sr. Assistant Attorney General  
Pamela Monroe, ARD  
Town of Danbury  
Merrimack County Registry of Deeds



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Rachel Roberts Naughton  
P.O. Box 135  
Warner, NH 03278

Re: 189 Wild Meadow Road, Danbury, NH

**ADMINISTRATIVE ORDER  
No. WMD 02-006**

**February 8, 2002**

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Rachel Roberts Naughton pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Rachel Roberts Naughton is an individual having a mailing address of P.O. Box 135 Warner, NH 03278.

**C. STATEMENTS OF FACTS AND LAW**

1. RSA 149-M authorizes DES to regulate the management of solid waste in the State of New Hampshire. RSA 149-M:7 authorizes the Commissioner of DES to adopt rules to implement solid waste management standards. Pursuant to this authority, the Commissioner has adopted Env-Wm 100-300 and Env-Wm 2100-3700 ("Solid Waste Rules").
2. Rachel Roberts Naughton is the owner of land at 189 Wild Meadow Road, Danbury, NH, more particularly described in a deed recorded in the Merrimack County Registry of Deeds at Book 1836, Page 0897, and identified on Danbury Tax Map 403 as Lot 003 ("Site").
3. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
4. RSA 149-M:4, XXI defines "refuse in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."

5. Env-Wm 102.42 defines "construction and demolition debris" in part, as "non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks."
6. On January 8, 2002, DES staff received a complaint from the Town of Danbury relative to unpermitted solid waste activities, as well as illegal burning, at the Site.
7. On January 8, 2002, DES staff investigated the complaint (January 8 Investigation). As DES staff approached the Site, DES staff smelled an acrid odor in the area of the Site. DES staff also observed and photographed smoke rising from the Site from a vantage point on Wild Meadow Road in Grafton, NH.
8. During the January 8 Investigation, DES staff spoke with Al Chartier, a part-time employee of Rachel Roberts Naughton's husband, George Naughton. The employee informed DES staff that Mr. and Mrs. Naughton were not at the Site. DES staff questioned the employee relative to the complaint DES received about the burning of solid waste at the Site. The employee informed DES staff that there was no fire at the Site and that no trucks had been bringing any material onto the Site. DES staff asked the employee for permission to inspect the Site and investigate the complaint. The employee stated that DES staff would need to get permission from Mr. George Naughton.
9. On January 8, 2002, DES staff obtained an Administrative Inspection Warrant ("Warrant") from the Franklin District Court to inspect the Site.
10. On January 9, 2002, DES staff along with a New Hampshire State Police Officer, went to the Site to serve the warrant. Mr. and Mrs. Naughton were not at the Site. The Warrant was served to an individual who identified himself only as a relative of Mrs. Naughton (would not give his name).
11. On January 9, 2002, DES staff conducted an inspection ("January 9 Inspection") of the Site. The purpose of the inspection was to determine Rachel Roberts Naughton's compliance status relative to RSA 149-M and the Solid Waste Rules.
12. During the January 9 Inspection, DES staff observed a small pit, approximately 20x70x5 feet, excavated onto an embankment, that contained partially burned and partially buried construction and demolition debris. DES staff also observed several holes in the snow/soil from which smoke was rising.

13. During the January 9 Inspection, DES staff hand dug several test pits into the partially buried debris pile at the Site. DES staff observed the following in each of the test pits:

- Test Pit #1: Fluorescent light fixtures, ballasts, metal flashing, a propane tank, the base of a white good, cardboard, Styrofoam insulation, charred wood and cardboard.
- Test Pit #2 A metal grill, charred asphalt shingles, fiberboard, and metal.
- Test Pit #3 Partially burned trash, lead-acid vehicle battery, lumber, pieces of upholstered furniture, glassware, cardboard, books, wiring fixtures, plastic spray bottles, asphalt roofing shingles, baling wire, painted wood, a soccer trophy, metal conduit, plastic soffit, vinyl siding, school notebooks, and newspapers.
- Test Pit #4: No excavation done. Waste visible consisted of asphalt shingles, wiring, siding, painted wood, metal, plastic, and tar paper.
- Test Pit #5 No excavation done at this smoke-filled hole due to the smoke.
- Test Pit #6 An engine piston, rubber belting, nail gun nails, drywall, asphalt shingles, car keys, tar paper, cardboard, metal flashing, wiring, and plywood.

14. The painted wood, fluorescent light fixtures, fiberboard, asphalt shingles, notebooks, newspapers, furniture, glassware, trash, insulation, white good, propane tank, drywall, tar paper, siding, metal, plastic, wiring, and cardboard observed by DES staff at the Site are solid wastes as defined by RSA 149-M:4, XXII.

15. RSA 149-M:4, IX defines a “[solid waste] facility” as “a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste.”

16. The Site constitutes a “solid waste facility” as defined by RSA 149-M:4, IX.

17. Env-Wm 102.116 defines “owner” as “a person who owns a facility or part of a [solid waste] facility.”

18. Rachel Roberts Naughton is the owner of a solid waste facility.

19. RSA 149-M:9, I states that “No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES].”

20. A review of DES files shows that Rachel Roberts Naughton has not applied for nor holds a permit to operate a solid waste facility at any New Hampshire location.

21. RSA 149-M:9, II states that "It shall be unlawful to transport solid waste to, or dispose of solid waste at, any facility other than an approved [solid waste] facility.
22. Solid waste was burned and disposed at an unpermitted solid waste facility.
23. Env-Wm 2602.04(a) requires that ash be disposed only at authorized facilities.
24. The Site is not permitted to accept ash.
25. Env-Wm 2702.02(e) specifies that facilities and practices shall not cause air pollution in violation of federal or state law, any air quality rules implemented by DES, the conditions of any air quality permit issued by DES, or the New Hampshire State Implementation Plan under the Clean Air Act.
26. Env-A 1001.03(c)(4), adopted by the Commissioner of DES, states that the following types of burning shall be permissible without authorization from DES: burning of untreated wood from the construction or demolition of a building, provided that such burning shall be done in an area which shall be specified and approved by officials having jurisdiction over open burning.
27. Solid waste was burned at the Site which did not meet the criteria set forth in Env-A 1001.03(c)(4).

#### **D. DETERMINATION OF VIOLATIONS**

1. Rachel Roberts Naughton has violated RSA 149-M:9, I by operating a solid waste facility without first obtaining a permit from DES.
2. Rachel Roberts Naughton has violated RSA 149-M:9, II by disposing of solid waste at an unpermitted solid waste facility.
3. Rachel Roberts Naughton has violated Env-Wm 2602.04(a) by disposing of ash at an unpermitted solid waste facility.
4. Rachel Roberts Naughton has violated Env-Wm 2702.02(e) by burning construction and demolition debris other than as allowed by Env-A 1000.

#### **E. ORDER**

Based on the above findings, DES hereby orders Rachel Roberts Naughton as follows:

1. **Immediately** cease operating an unpermitted solid waste facility.
2. **Immediately** cease disposing of solid waste at an unpermitted facility.
3. **Immediately** cease burning solid waste.

4. **Within 30 days** of this Order, submit to DES for approval a Scope of Work for the removal of all solid waste and ash at the Site and confirmation of removal by surface inspection and test pitting. Include as part of the Scope of Work a schedule which details when the work will be done.
5. Upon DES approval of the Scope of Work and proposed schedule, implement the Scope of Work as approved and complete the removal of all solid waste and ash at the Site to a facility or facilities permitted to accept such wastes in accordance with the approved schedule.
6. **Within 7 days** of the disposal of the solid waste and ash, forward disposal receipts to DES.
7. Submit one written status report to DES **within 10 calendar days** of completing the approved Scope of Work certifying that corrective measures have been implemented in accordance with the approved Scope of Work and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, copies of any written plans or proceedings developed.
8. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Michael Galuszka, Waste Management Specialist  
DES Waste Management Division  
6 Hazen Drive  
Concord, NH 03301  
Fax: (603) 271-2456  
e-mail: [mgaluszka@des.state.nh.us](mailto:mgaluszka@des.state.nh.us)

#### **F. APPEAL**

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Rachel Roberts Naughton of the obligation to comply with the Order.

#### **G. OTHER PROVISIONS**

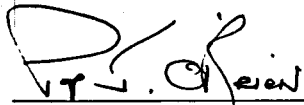
Please note that RSA 149-M provides for civil and criminal penalties and administrative fines for violations of the statute or any rule adopted by DES relative to the statute, as well as for violations of this Order. RSA 149-M:15 provides for civil forfeitures of up to \$25,000 for each day of a continuing violation, in addition to enforcement by injunctive relief. In the event that compliance is not achieved, DES may take further action against Rachel Roberts Naughton, including referring the matter to the New Hampshire Department of Justice for imposition of civil or criminal penalties. DES reserves the right to pursue administrative penalties for the

violations noted above.

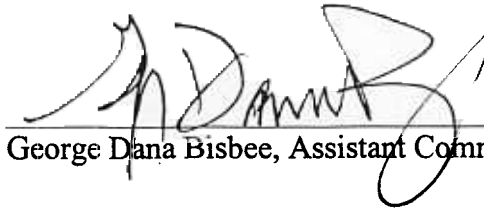
Rachel Roberts Naughton remains obligated to comply with all applicable requirements, in particular the Solid Waste Rules. DES will continue to monitor compliance with applicable requirements and will take appropriate action if additional violations are discovered.

By copy of this Order, this matter is being referred to the DES Air Resources Division, for investigation of possible violations of RSA 125-C.

This Order is being recorded in the Merrimack County Registry of Deeds so as to run with the land.



Philip J. O'Brien, Ph.D., Director  
Waste Management Division



George Dana Bisbee, Assistant Commissioner

Certified Mail/RRR: 7099 3400 0002 9769 7785

cc: File/DB  
Gretchen Rule, DES Enforcement Coordinator  
Public Information Officer, DES PIP Office  
Jennifer Patterson, Sr. Assistant Attorney General  
Pamela Monroe, ARD  
Town of Danbury  
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